

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOBBY COLBERT,

Petitioner,

v.

JIM McDONALD,

Respondent.

CASE NO. 2:08-cv-00870-RSL

ORDER DENYING FIFTH MOTION
FOR RELIEF FROM JUDGMENT

This matter comes before the Court on petitioner's fifth "Motion for Relief from Judgment / Motion to Take Judicial Notice." Dkt. # 67. In April 2009, the Court denied petitioner's request for a writ of habeas corpus on the merits and declined to resolve the issue of exhaustion, relying on 28 U.S.C. § 2254(b)(2) ("An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State."). Dkt. # 21 and # 25. A certificate of appealability was granted regarding only petitioner's claim of a due process violation arising from joining unrelated offenses for trial. Dkt. # 30. The Ninth Circuit affirmed the dismissal of the petition for writ of habeas corpus on exhaustion grounds. Dkt. # 34.

Petitioner requests that the Court vacate the final judgment in this matter because the Skagit County Superior Court has expanded the record, apparently accepting a

Washington State Patrol Crime Laboratory Report in the context of a post-conviction evidentiary hearing, and petitioner wants to pursue a *Brady* claim related to the failure to disclose the evidence earlier. Not only has the above-caused matter been finally resolved on appeal, but the Ninth Circuit’s dismissal was on exhaustion grounds, an issue that is not altered by the potential *Brady* violation identified by petitioner.

There being no further relief available under this cause number, petitioner's fifth motion for relief from judgment (Dkt. # 67) is DENIED.

Dated this 5th day of August, 2024.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge